

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region IX

In The Matter Of:

The Purity Oil Sales Superfund Site  
Fresno, California

Chevron Corporation  
Unocal Corporation  
Phillips Petroleum Company  
Pacific Gas & Electric Company, Inc.  
Southern Pacific Transportation Company  
California Department of Transportation  
Morrison-Knudsen Engineers, Inc.  
Foster Poultry Farms  
Cummins West, Inc.

U.S. EPA  
Docket No.91-28

Respondents

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Proceeding Under Section 106(a) of the  
Comprehensive Environmental Response,  
Compensation, and Liability Act of 1980,  
as amended (42 U.S.C. § 9606(a))

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

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## ADMINISTRATIVE ORDER FOR REMEDIAL DESIGN AND REMEDIAL ACTION

## I. INTRODUCTION AND JURISDICTION

This Administrative Order directs the above-captioned Respondents ("the Respondents") to perform the remedial design for groundwater extraction, treatment and reinjection as described in the Record of Decision for the Purity Oil Sales Site ("the Site"), dated September 26, 1989, and to implement the design by performing a remedial action. Work required under this Order is further defined in Section IX (Work To Be Performed). This Order is issued to each Respondent by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B.

## II. FINDINGS OF FACT

### A. Site Description

1. The seven-acre Purity Oil Sales site is located approximately one-half mile south of the Fresno city limits, in the township of Malaga. The site is located in a mixed-use area and is surrounded by agricultural and industrial land on the west, small businesses to the north, a residential trailer park and market on the northeast, and a small farm on the southeast.

1        2. About one-half mile to the west and southwest of the  
2 site are fields of oats, alfalfa, cotton, fruit trees, and  
3 grapes.

4        3. The Purity Oil site is located in the San Joaquin River  
5 drainage basin. The San Joaquin River is approximately 12 miles  
6 north of the Purity site. Several irrigation canals are located  
7 in the region, including the North Central Canal along the  
8 southern site boundary.

9        4. The groundwater aquifer in the Fresno area has been  
10 designated as a sole-source aquifer by EPA under the Safe  
11 Drinking Water Act. The Fresno sole-source aquifer includes the  
12 Purity site within its boundaries.

13       5. The aquifer in the vicinity of the site is unconfined to  
14 depths of several hundred feet. Because there is no confining  
15 clay zone layer to restrict vertical groundwater flow, the  
16 shallow aquifer underlying the Purity site is probably  
17 hydrogeologically connected with deeper aquifer zones which  
18 provide domestic water supply for the City of Fresno and the  
19 surrounding area. Depth to groundwater at the site is between 40  
20 and 50 feet. The present direction of groundwater flow is towards  
21 Fresno (the northwest).

22       6. Petroleum waste oils were re-refined at the site from  
23 1934 to the early 1970's. The waste oil was often mixed with  
24 solvents. These waste oils and solvents came from businesses  
25 such as service stations, car dealers, truck stops, electrical  
26 transformer yards, and military facilities. The used oil was re-  
27 refined using a number of treatment processes including  
28 clarification, chemical addition, dehydration, distillation, and

1 filtration. The oil and by-products from the refining process  
2 were collected and stored in sumps and storage tanks and were  
3 disposed of onsite in sludge pits.

4 7. During its history, the recycling facility has changed  
5 ownership several times.

6 8. From 1934 to 1948, William Dicky and Ray Turner  
7 recycled used oil at the site under the name Para Penn.

8 9. In 1948, William Siegfried and Robert Hall bought the  
9 site and operated it under the name Paraco Oil Incorporated.

10 10. In 1965, the site and operation were sold to Michael  
11 Marcus who operated it under the name Purity Oil Sales,  
12 Incorporated.

13 11. In 1974, Michael Marcus changed the name of Purity Oil  
14 Sales to O.J. Refinery.

15 B. Regulatory and Enforcement History

16 1. In June 1973, Purity Oil began complying with a Fresno  
17 County Superior Court order to empty and backfill the waste pits.  
18 Although the waste pits were backfilled by January 1975, no  
19 evidence is available to indicate that petroleum wastes stored in  
20 the pits were emptied.

21 2. In January 1975, the California Regional Water Quality  
22 Control Board, Central Valley Region (RWQCB) issued a Cleanup and  
23 Abatement Order to O.J. Refinery.

24 3. In January 1975, the Fresno County District Attorney  
25 advised O.J. Refinery that the County would enforce a preliminary  
26 injunction prohibiting the operation of the plant.

27 4. In 1975, Michael Marcus filed for bankruptcy, and the  
28 site was taken by the State of California for nonpayment of

1 taxes.

2 5. A fire at the site in 1976 destroyed the main warehouse  
3 building and adjacent equipment. The remaining equipment was  
4 removed from the site, and the area was partially regraded.

5 6. In 1979, the State of California sold the property to  
6 William Enns. In 1980, the Department of Health Services (DHS),  
7 informed William Enns of a serious hazardous waste problem on his  
8 property and requested a cleanup plan. Enns sued the State  
9 requesting a rescission of the sale. In 1982, the rescission was  
10 granted, and the site was returned to the State of California.

11 7. The Central Valley Regional Water Quality Control Board  
12 (RWQCB) obtained surface-water samples from the North Central  
13 Canal in 1980. One year later, the RWQCB also conducted  
14 groundwater sampling from private wells near the site.

15 8. In February 1982, the EPA Emergency Response Team, DHS,  
16 and RWQCB carried out a joint site investigation that included  
17 surface and subsurface soil sampling, monitoring well  
18 installation, and groundwater sampling. Air quality data were  
19 also obtained to monitor the release of vapors during sampling  
20 and drilling. This investigation indicated that the onsite soil  
21 and groundwater contained volatile organic compounds, semi-  
22 volatile organic compounds and inorganic compounds.

23 9. The site was included on the EPA National Priority List  
24 in December 1982, pursuant to Section 105 of CERCLA, 42 U.S.C.  
25 Section 9605, as set forth at 40 C.F.R. Part 300.

26 10. DHS was designated the lead agency for the site. Field  
27 explorations and chemical testing performed by the State's  
28 consultants, Harding Lawson Associates (HLA), were completed in

1 September 1984. DHS issued a Remedial Investigation Report on  
2 May 12, 1986. During HLA's Remedial Investigation, the EPA  
3 Emergency Response Team removed approximately 1,800 cubic yards  
4 of hazardous oily/tarry materials from the site.

5 11. In January 1986, EPA assumed the lead for the site and  
6 expanded the Remedial Investigation work performed by DHS to  
7 include additional soil and groundwater studies, pursuant to  
8 CERCLA and the National Contingency Plan, 40 C.F.R. Part 300.

9 12. During September 1987, EPA removed approximately 33,000  
10 gallons of waste oil and water from Tank No. 1 to eliminate the  
11 potential for an oil spill.

12 13. The Remedial Investigation (RI) Report prepared by EPA  
13 was released in October 1988.

14 14. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,  
15 EPA published notice of the completion of the Feasibility Study  
16 Report ("FS"). In April 1989, opportunity was provided for  
17 public comment on the proposed remedial action when the FS Report  
18 and the proposed plan were released to the public.

19 15. EPA's decision selecting the groundwater remedial  
20 action to be implemented at the site is embodied in a final  
21 Record of Decision ("ROD"), executed on September 26, 1989, upon  
22 which the State had a reasonable opportunity to review and  
23 comment, and for which the State has given its concurrence. The  
24 Record of Decision is attached to this Order as Appendix 1 and is  
25 incorporated by reference. The Record of Decision is supported  
26 by an administrative record that contains the documents and  
27 information upon which EPA based the selection of the response  
28 action. The Administrative Record was made available to the

1 public in April 1989 and is available in the Fresno County  
2 Central Library.

3 16. The Respondents, Chevron Corporation, Unocal  
4 Corporation, Phillips Petroleum Company, Pacific Gas & Electric  
5 Company, Inc., Southern Pacific Transportation Company,  
6 California Department of Transportation, Morrison-Knudson  
7 Engineers, Inc., Foster Poultry Farms, and Cummins West, Inc.,  
8 each generated waste oil and solvents which were picked up by  
9 Para Penn, Paraco, or Purity Oil employees for recycling. During  
10 this process sludge from Respondents' waste oil was disposed of  
11 at the site. The sludge contained hazardous substances.

12 17. On April 1, 1991, EPA issued special notice letters to  
13 Respondents, as well as other parties pursuant to Section 122(e)  
14 of CERCLA, providing all of them with the opportunity to perform  
15 or finance the remedial action selected in the ROD.

16 18. In response to the special notice letters, EPA entered  
17 into negotiations with the Potentially Responsible Parties for  
18 the performance of the remedial action. The negotiations failed  
19 to result in settlement.

20 C. Groundwater Contamination

21 1. The contaminants found in groundwater at the site,  
22 which exceed State or Federal drinking water standards include  
23 (in parts per billion):  
24  
25  
26  
27  
28



			<u>Maximum</u>
	<u>Contaminant</u>	<u>Standard</u>	<u>Concentration Detected</u>
1			
2			
3	Trichloroethylene	5	8
4	1,2-Dichloroethane	.5	8
5	1,1-Dichloroethane	5	53
6	1,1-Dichloroethene	6	12
7	Benzene	1	16.9
8	Vinyl Chloride	.5	3
9	Carbon Tetrachloride	.5	13
10	Cis-1,2-DCE	6	220
11	Trans-1,2-DCE	10	19
12	Iron	300	1,540
13	Manganese	50	2,520

### 14 III. CONCLUSIONS OF LAW AND DETERMINATIONS

15 A. The Purity Oil Sales Site and any other area where hazardous  
 16 substances have come to be located is a "facility" as defined in  
 17 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18 B. Each Respondent is a "person" as defined in Section 101(21)  
 19 of CERCLA, 42 U.S.C. § 9601(21).

20 C. Respondents are each a "liable party" as defined in Section  
 21 107(a) of CERCLA, 42 U.S.C. § 9607(a) because each arranged for  
 22 the disposal or treatment, or arranged with a transporter for  
 23 transport for disposal or treatment of hazardous substances which  
 24 each owned or possessed, and are subject to this Order under  
 25 Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

26 D. The substances listed in paragraph II(C)(1) are found at the  
 27 Site and are "hazardous substances" as defined in Section 101(14)  
 28 of CERCLA, 42 U.S.C. § 9601(14).

1 E. The past disposal and migration of hazardous substances from  
2 the Site constitute "releases" as defined in Section 101(22) of  
3 CERCLA, 42 U.S.C. § 9601(22).

4 F. The potential for future migration of hazardous substances  
5 from the Site poses a threat of a "release" as defined in Section  
6 101(22) of CERCLA, 42 U.S.C. § 9601(22).

7 G. The release and threat of release of one or more hazardous  
8 substances from the facility presents an imminent and substantial  
9 endangerment to the public health or welfare or the environment.

10 H. The contamination and endangerment at this Site constitute  
11 an indivisible injury.

12 I. The actions required by this Order are necessary to protect  
13 the public health, welfare, and the environment.

14 IV. NOTICE TO THE STATE

15 On September 23, 1991, prior to issuing this Order, EPA  
16 notified the State of California, Department of Toxic Substances  
17 Control, that EPA would be issuing this Order.

18 V. ORDER

19 Based on the foregoing, the Respondents are hereby ordered  
20 to comply with the following provisions, including but not  
21 limited to all attachments to this Order, all documents  
22 incorporated by reference into this Order, and all schedules and  
23 deadlines in this Order, attached to this Order, or incorporated  
24 by reference into this Order.

25 VI. DEFINITIONS

26 Unless otherwise expressly provided herein, terms used in  
27 this Order which are defined in CERCLA or in regulations  
28 promulgated under CERCLA shall have the meaning assigned to them

1 in the statute or its implementing regulations. Whenever terms  
2 listed below are used in this Order or in the documents attached  
3 to this Order or incorporated by reference into this Order, the  
4 following definitions shall apply:

5 "CERCLA" shall mean the Comprehensive Environmental  
6 Response, Compensation, and Liability Act of 1980, as amended, 42  
7 U.S.C. §§ 9601, et seq.

8 "Clean-up Standard(s)" shall mean the criteria respecting  
9 the degree of clean-up to be achieved in the groundwater at the  
10 Site. These criteria shall include those identified in the ROD,  
11 those established by the applicable or relevant and appropriate  
12 requirements ("ARARs") identified in the ROD, and those set forth  
13 in Section IX (Work To Be Performed).

14 "Day" shall mean a calendar day unless expressly stated to  
15 be a working day. "Working day" shall mean a day other than a  
16 Saturday, Sunday, or Federal holiday. In computing any period of  
17 time under this Order, where the last day would fall on a  
18 Saturday, Sunday, or Federal holiday, the period shall run until  
19 the end of the next working day.

20 "EPA" shall mean the United States Environmental Protection  
21 Agency.

22 "National Contingency Plan" or "NCP" shall mean the National  
23 Contingency Plan promulgated pursuant to Section 105 of CERCLA,  
24 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any  
25 amendments thereto.

26 "Operation and Maintenance" or "O&M" shall mean all  
27 activities required under the Operation and Maintenance Plan  
28 developed by the Respondents pursuant to this Order and Section

1 IX, (Work To Be Performed) and approved by EPA.

2 "Oversight" shall mean the United States' and/or its  
3 contractors' inspection of remedial work and all other actions  
4 taken to verify the adequacy of all activities undertaken and  
5 reports submitted by the Respondent as required under the terms  
6 of this Order.

7 "Performance Standards" shall mean those cleanup standards,  
8 standards of control, and other substantive requirements,  
9 criteria or limitations, identified in the Record of Decision and  
10 Section IX (Work To Be Performed), that the Remedial Action and  
11 work required by this Order must attain and maintain.

12 "Record of Decision" or "ROD" shall mean the EPA Record of  
13 Decision relating to the Site, signed on September, 26, 1989, by  
14 the Regional Administrator, EPA Region 9, and all attachments  
15 thereto.

16 "Remedial Action" or "RA" shall mean those activities, ex-  
17 cept for Operation and Maintenance, to be undertaken by the  
18 Respondents to implement the final plans and specifications as  
19 approved by EPA, including any additional activities required  
20 under Sections IX, X, XI, XII, and XXI of this Order.

21 "Remedial Design" or "RD" shall mean those activities to be  
22 undertaken by the Respondents to develop the final plans and  
23 specifications for the Remedial Action pursuant to the Statement  
24 of Work and this Order.

25 "Response Costs" shall mean all costs including,  
26 administrative, enforcement, removal, investigative and remedial  
27 or other direct and indirect costs and accrued interest thereon,  
28 incurred by the United States pursuant to CERCLA. Response costs

1 also include but are not limited to oversight costs, which are  
2 the costs of overseeing the Work, such as the costs of reviewing  
3 or developing plans, reports and other items pursuant to this  
4 Order and costs associated with verifying the Work.

5 "Section" shall mean a portion of this Order identified by a  
6 roman numeral, and includes one or more paragraphs.

7 "Site" or "Purity Oil Sales Superfund Site" shall mean the  
8 property located at 3281 South Maple Avenue, Fresno, California  
9 including all areas where waste materials were disposed or have  
10 come to be located.

11 "SOW" shall mean the Statement of Work for impementation of  
12 the Remedial Action and Operation and Maintenance at the Site, as  
13 set forth in Appendix 2 to this Order and any modifications made  
14 under this Order.

15 "State" shall mean the State of California.

16 "United States" shall mean the United States of America.

17 "Waste Material" shall mean (1) any "hazardous substance"  
18 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19 "Work" shall mean all activities the Respondent is required  
20 to perform under this Order, including Remedial Design, Remedial  
21 Action, Operation and Maintenance, and any activities required to  
22 be undertaken pursuant to Sections IX (Work To Be Performed)  
23 through XX (Administrative Record) of this Order.

24 "Work Plan" shall mean the work plan developed by the  
25 Respondents and approved by EPA which details the work to be  
26 conducted pursuant to this Order.

27 VII. NOTICE OF INTENT TO COMPLY

28 Respondents shall each provide, not later than five (5)

1 days after the effective date of this Order, written notice to  
2 EPA's Remedial Project Manager (RPM) stating whether or not it  
3 will comply with the terms of this Order. If Respondents, or  
4 any one of them, do not unequivocally commit to perform the  
5 requirements of this Order, they, or each so refusing, shall be  
6 deemed to have violated this Order and to have failed or refused  
7 to comply with this Order. Respondents' written notice shall  
8 describe, using facts that exist on or prior to the effective  
9 date of this Order, any "sufficient cause" defenses asserted by  
10 Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42  
11 U.S.C. §§ 9606(b), 9607(c)(3). The absence of a response by EPA  
12 to the notice required by this paragraph shall not be deemed to  
13 be acceptance of Respondents' assertions.

#### 14 VIII. PARTIES BOUND

15 A. This Order shall apply to and be binding upon the  
16 Respondents identified in Section II.B.16, their directors,  
17 officers, employees, agents, successors, and assigns.  
18 Respondents are jointly and severally responsible for carrying  
19 out all activities required by this Order. No change in the  
20 ownership, corporate status, or other control of Respondents  
21 shall alter any of the Respondents' responsibilities under this  
22 Order.

23 B. Respondents shall provide a copy of this Order to any  
24 prospective owners or successors before a controlling interest in  
25 Respondents' assets, property rights, or stock are transferred to  
26 the prospective owner or successor. Respondents shall provide a  
27 copy of this Order to each contractor, sub-contractor,  
28 laboratory, or consultant retained to perform any Work under this

1 Order, within five days after the effective date of this Order or  
2 on the date such services are retained, whichever date occurs  
3 later. Respondents shall also provide a copy of this Order to  
4 each person representing any Respondent with respect to the Site  
5 or the Work and shall condition all contracts and subcontracts  
6 entered into hereunder upon performance of the Work in conformity  
7 with the terms of this Order. With regard to the activities un-  
8 dertaken pursuant to this Order, each contractor and subcontrac-  
9 tor shall be deemed to be related by contract to the Respondents  
10 within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.  
11 § 9607(b)(3). Notwithstanding the terms of any contract,  
12 Respondents are (and each Respondent is) responsible for  
13 compliance with this Order and for ensuring that their (its)  
14 contractors, subcontractors and agents comply with this Order,  
15 and perform any Work in accordance with this Order.

16 IX. WORK TO BE PERFORMED

17 A. General Obligations

18 1. Respondents shall cooperate with EPA in providing infor-  
19 mation regarding the Work to the public. As requested by EPA,  
20 Respondents shall participate in the preparation of such informa-  
21 tion for distribution to the public and in public meetings which  
22 may be held or sponsored by EPA to explain activities at or  
23 relating to the Site.

24 2. Notwithstanding any approvals which may be granted by  
25 the United States or other governmental entities, Respondents  
26 shall assume any and all liability arising from or relating to  
27 their contractors, subcontractors, or any other person acting on  
28 their behalf in the performance of the Remedial Action or their

1 failure to perform fully or complete the Remedial Action.

2 3. Respondents shall appoint a representative ("Project  
3 Coordinator") designated by them to act on their behalf to  
4 coordinate the Remedial Action. Within 5 days after the  
5 effective date of this Order, Respondents shall notify EPA in  
6 writing of the name and qualifications of the Project  
7 Coordinator, including the support entities and staff, proposed  
8 to be used in carrying out Work under this Order. If at any time  
9 Respondents propose to use a different Project Coordinator,  
10 Respondents shall notify EPA and shall obtain approval from EPA  
11 before the new Project Coordinator performs any Work under this  
12 Order.

13 4. EPA will review Respondents' selection of a Project  
14 Coordinator according to the terms of this paragraph. If EPA  
15 disapproves of the selection of the Project Coordinator,  
16 Respondents shall submit to EPA within 30 days after receipt of  
17 EPA's disapproval of the Project Coordinator previously selected,  
18 a list of Project Coordinators, including primary support  
19 entities and staff, that would be acceptable to Respondents. EPA  
20 will thereafter provide notice to Respondents of the names of the  
21 Project Coordinators that are acceptable to EPA. Respondents may  
22 then select any approved Project Coordinator from that list and  
23 shall notify EPA of the name of the Project Coordinator selected  
24 within twenty-one (21) days of EPA's designation of approved  
25 Project Coordinator.

26 5. Within twenty-one (21) days after the effective date of  
27 this Order, the Respondents shall submit to EPA for approval a  
28 Communication and Coordination Plan (CCP) that specifies the



1 requirements and procedures by which the Respondents will  
2 communicate and coordinate with one another in carrying out the  
3 requirements of the Order. The CCP shall include at a minimum the  
4 following:

5           a. Communication Strategy The Respondents shall  
6 specify how the Project Coordinator and the individual  
7 Respondents will communicate and disseminate information relative  
8 to this Order. The name, title, address and telephone number of  
9 the primary contact person for each Respondent shall be included  
10 in the communication strategy.

11           b. Coordination of Efforts The Respondents shall  
12 describe with specificity how the technical, financial, and  
13 administrative requirements of this Order are to be coordinated  
14 and distributed among and performed by the Respondents. The CCP  
15 shall describe the obligations of each and every Respondent in  
16 full.

17           6. Each Respondent shall sign the CCP (by a duly authorized  
18 representative if the Respondent is other than a natural person)  
19 prior to its submission to EPA. Failure of any Respondent to sign  
20 the CCP will constitute a violation of this Order by the  
21 individual Respondent.

22           7. The Respondents shall submit all proposed changes or  
23 amendments to the CCP to EPA for approval.

24           8. The CCP as approved by EPA shall be incorporated into  
25 and enforceable under this Order.

26           9. While Respondents may collect, stage, and secure  
27 materials on-site, they shall not, in performance of response  
28

1 activities under this Order, treat and redeposit material back  
2 into the Site without the presence and approval of EPA or EPA's  
3 designated oversight personnel.

4 10. Respondents shall dispose of any materials taken off-  
5 site in compliance with the EPA's Revised Procedures for  
6 Implementating Off-Site Response Actions ("Offsite Policy" EPA  
7 OSWER Directive 9834.11, November 13, 1987) and any amendments  
8 thereto and the California Code of Regulations (CCR), Title 22,  
9 Chapter 30, Article 6.5, Requirements for Transporters of  
10 Hazardous Waste.

11 11. Respondents shall submit all reports (daily, weekly,  
12 monthly, etc.) prepared by their contractors and subcontractors  
13 to EPA's designated oversight personnel, according to the  
14 schedules set forth in the SOW.

15 12. Respondents shall sample and monitor groundwater as  
16 specified in the SOW.

17 B. IDENTIFICATION OF AND OBLIGATIONS REGARDING DOCUMENTS

18 TO BE SUBMITTED TO EPA

19 "DELIVERABLES"

20 1. Remedial Design Plan: Within 30 days of the  
21 effective date of this Order, Respondents shall submit a draft  
22 work plan to EPA for the design of the Remedial Action at the  
23 Site ("Remedial Design Work Plan"). The Remedial Design Work  
24 Plan shall provide for design of the remedy set forth in the ROD  
25 in accordance with the SOW and, upon its approval by EPA, shall  
26 be incorporated into and become enforceable under this Order. In  
27 accordance with the attached SOW, the Respondents shall submit to  
28

1 EPA a Health and Safety Plan for field design activities which  
2 conforms to the applicable Occupational Safety and Health  
3 Administration and EPA requirements including, but not limited  
4 to, 29 C.F.R. § 1910.120.

5           a. The Remedial Design Work Plan shall include plans  
6 and schedules for implementation of all remedial design and pre-  
7 design tasks identified in the SOW, including, but not limited  
8 to, plans and schedules for the completion of: Any additional  
9 field or pilot testing work necessary to complete each component  
10 of the Remedial Action; Sampling and Analysis Plan; Quality  
11 Assurance Project Plans (QAPPs); Health & Safety Plan;  
12 Preliminary Design Submittals; Intermediate Design Submittals;  
13 Pre-final and Final Design Submittals. In addition, the Remedial  
14 Design Work Plan shall include a schedule for completion of the  
15 Remedial Action Work Plan.

16           b. Upon approval by EPA of the Remedial Design Work  
17 Plan, Respondents shall implement the Remedial Design Work Plan  
18 in accordance with the schedule approved by EPA. The Respondents  
19 shall submit all plans, submittals and other deliverables  
20 required under the approved Remedial Design Work Plan in  
21 accordance with the approved schedule for review and approval  
22 pursuant to the SOW. Unless otherwise directed by EPA,  
23 Respondents shall not commence further Remedial Design Activities  
24 at the Site prior to approval of the Remedial Design Work Plan.

25           c. The preliminary design submittal shall include, at  
26 a minimum, the following: (1) design criteria to achieve the  
27 Performance Standards; (2) results of additional field sampling;

28

(3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and (6) preliminary construction schedule.

d. The Pre-final and Final design submittals shall include, at a minimum, the following: (1) plans and specifications; (2) Remedial Action project schedule; (3) Remedial Action Health and Safety Plan; (4) Remedial Action Sampling and Analysis Plan; (5) Construction Quality Assurance Project Plan (CQAPP); (6) Operation and Maintenance Plan; (7) and Operation and Maintenance Quality Assurance Project Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

## 2. Remedial Action Work Plan

a. Respondents shall submit, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan") with the final design. The Remedial Action Work Plan shall provide plans and schedules for construction of the components of the Remedial Action, in accordance with SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order.

b. The Remedial Action Work Plan shall contain all items specified in the attached SOW, including the following:

(1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action Plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) methods for satisfying ARARs and permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Contingency Plan; (8) tentative formulation of the Remedial Action Team; (9) construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials, and (11) a description of the monitoring plan to be implemented to demonstrate compliance with ROD standards through confirmation sampling. The Remedial Action Work Plan shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval by EPA of the Remedial Action Work Plan, Respondents shall implement the activities required under the Remedial Action Work Plan in accordance with the provisions of the Remedial Action Work Plan, including the schedule as approved by EPA. The Respondents shall submit all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to the SOW. Unless

1 otherwise directed by EPA, Respondents shall not commence  
2 physical on-site activities at the Site prior to approval of the  
3 Remedial Action Work Plan.

4       3. Monthly Progress Reports: The Respondents shall  
5 provide monthly written progress reports to EPA. These progress  
6 reports shall be submitted by the 10th of each month for work  
7 done the preceding month and planned for the current month,  
8 including sampling events. The first monthly report pursuant to  
9 this Order will be due by the tenth of the calendar month  
10 immediately following the effective date of this Order. The  
11 progress reports shall include, but not be limited to the  
12 information as described in Task 8.1 of the SOW.

13       4. Annual Monitoring Report: The Respondents shall submit  
14 an Annual Report to EPA within two (2) weeks after receipt of  
15 validated data for the final monthly sampling event of each  
16 calendar year until the Work is completed. The Annual Report  
17 shall summarize the groundwater monitoring data and the treatment  
18 system operational data, as appropriate, for the previous year.  
19 This Annual Report shall contain, but not be limited to a summary  
20 of the information collected over the previous year, as described  
21 in Task 8.3 of the SOW.

22       5. Confirmation Sampling Plan: Respondents shall submit a  
23 Confirmation Sampling Plan that describes the sampling program to  
24 be completed to verify that Clean-up Standards have been  
25 achieved.

26       6. Respondents shall submit a draft and a final copy of  
27 each of the deliverables as described above (except the monthly  
28

1 report and the Annual Reports) pursuant to the schedule described  
2 and attached to the SOW. Any failure of the Respondents to  
3 submit a deliverable in compliance with the schedule will be  
4 deemed a violation of this Order.

5 7. After review of any deliverable, plan, report, or other  
6 item which is required to be submitted for review and approval  
7 pursuant to this Order, EPA may: (a) approve the submission; (b)  
8 approve the submission with modifications; (c) disapprove the  
9 submission and direct Respondents to re-submit the document after  
10 incorporating EPA's comments; or (d) disapprove the submission  
11 and assume responsibility for performing all or any part of the  
12 response action. As used in this Order, the terms "approval by  
13 EPA", "EPA approval" or a similar term mean the action described  
14 in subparagraphs (a) or (b) of this paragraph.

15 8. In the event of approval or approval with modifications  
16 by EPA, Respondents shall proceed to take any action required by  
17 the deliverable, plan, report, or other item, as approved or  
18 modified by EPA.

19 9. Upon receipt of the notice of disapproval or a request  
20 for modification, Respondents shall, within fourteen (14) days,  
21 correct the deficiencies and resubmit the deliverable, plan,  
22 report or other item for approval. Notwithstanding the notice of  
23 disapproval, Respondents shall proceed, at the direction of EPA,  
24 to take any action required by any non-deficient portion of the  
25 submission.

26 10. If any submission is not approved by EPA, Respondents  
27 shall be deemed to be in violation of this Order.

11. The Work performed by the Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards.

C. ADDITIONAL OBLIGATIONS: Work To Be Performed

1. Neither the Work Plan nor any approvals, permits or other permissions which may be granted by EPA related to this Order constitute a warranty or representation of any kind by the United States that the Work Plan will achieve the standards set forth in the ROD, and in the SOW, and shall not foreclose the United States from seeking performance of all terms and conditions of this Order.

Nothing in this Order shall be construed to relieve Respondents of their obligations to achieve all Clean-up Standards and Performance Standards set forth in the ROD and in the SOW. Following termination of this Order, if post-termination monitoring indicates that the groundwater Clean-up Standards are being exceeded, Respondents shall recommence treatment of the groundwater until Clean-up Standards have been achieved.

2. Respondents shall meet all Clean-up Standards and Performance Standards identified in the ROD and the SOW, including, but not limited to the following:

Groundwater on-site shall be treated to meet all Clean-up Standards specified in each of the subparagraphs below. "On-site" shall mean the areal extent of contamination and all areas in close proximity to the contamination necessary for implementation of the Remedial Action.

a. All Maximum Contaminant Levels (MCLs) established under



the Safe Drinking Water Act at the time of entry of this Order or at any subsequent time while the Order is in effect, including but not limited to, the following MCL's currently established at 40 C.F.R. Part 141, Subpart B, and

b. All State of California MCLs established under the California Administrative Code, Title 22, Division 4, at the time of entry of this Order or at any subsequent time while the Order is in effect, including but not limited to the following MCLs currently established at the California Administrative Code, Title 22, Division 4, Sections 64435 - 64445.1 and/or State Action Levels established under the authority of the California Health and Safety Code, Chapter 6.5, Sections 25150 and 25159; Chapter 6.6, Section 25187(a); and Chapter 6.8, Sections 25355.5 and 25356.1(c) at the time of entry of this Order or at any subsequent time while the Order is in effect.

Current clean-up standards based on subparagraphs (1) & (2) above include but are not limited to the following:

<u>Contaminant</u>	<u>Standard (ppb)</u>
Trichloroethylene	5
1,2-Dichloroethane	.5
1,1-Dichloroethane	5
1,1-Dichloroethene	6
Benzene	1
Vinyl Chloride	.5
Carbon Tetrachloride	.5
Cis-1,2-DCE	6
Trans-1,2-DCE	10



that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondents that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondents' certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. §§ 9604, 9606, or 9607.

6. Within thirty (30) days after Respondents conclude that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondents shall submit to EPA a Work Completion Report certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge and Respondents' certification to EPA, issue written notification to Respondents that the Work has been completed, as appropriate, in accordance with procedures determined by EPA for Respondents' certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform

1 periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C.  
2 § 9621(c), or to take or require any action that in the judgment  
3 of EPA is appropriate at the Site or study area, in accordance  
4 with 42 U.S.C. §§ 9604, 9606, or 9607.

5 X. ADDITIONAL WORK

6 A. In the event that EPA or Respondents determine that  
7 additional response work is necessary to protect human health and  
8 the environment, to meet the clean-up standards described in the  
9 ROD, the SOW, or in Section IX (Work To Be Performed) of this  
10 Order, Respondents shall implement such additional work.  
11 Notification of any additional work will be provided to the  
12 Project Coordinator.

13 B. Unless otherwise stated by EPA, within 30 days of  
14 receipt of notice by EPA that additional work is necessary pur-  
15 suant to this Section, the Respondents shall submit a work plan  
16 as specified by EPA. The plan shall conform to the requirements  
17 in Section IX (Work To Be Performed).

18 C. Any additional work determined to be necessary by  
19 Respondents is subject to approval by EPA prior to  
20 implementation.

21 D. Any additional work determined to be necessary by  
22 Respondents and approved by EPA, or determined to be necessary by  
23 EPA to protect human health and the environment, to carry out the  
24 remedy described in the ROD, or meet the Clean-up Standards,  
25 shall be completed by Respondents in accordance with the  
26 standards, specifications, and schedules approved by EPA.

27 E. If EPA disapproves the plan pursuant to the provisions  
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1 of Section IX (Work To Be Performed), within 14 days of such  
2 disapproval, Respondents, consistent with Section IX (Work to Be  
3 Performed), shall submit a modified plan.

4 F. Respondents shall promptly implement the plan as  
5 approved or modified by EPA.

6 XI. EPA PERIODIC REVIEW

7 Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any  
8 applicable regulations, EPA may review the Site to assure that  
9 the Work performed pursuant to this Order adequately protects  
10 human health and the environment. Until such time as EPA cer-  
11 tifies completion of the Work, Respondents shall conduct the  
12 requisite studies, investigations, or other response actions as  
13 determined necessary by EPA in order to permit EPA to conduct the  
14 review under Section 121(c) of CERCLA. As a result of any review  
15 performed under this paragraph, Respondents may be required to  
16 perform additional Work or to modify Work previously performed.

17 XII. ENDANGERMENT AND EMERGENCY RESPONSE

18 A. In the event of any action or occurrence during the  
19 performance of the Work which causes or threatens to cause a  
20 release of a hazardous substance or which may present an  
21 immediate threat to public health or welfare or the environment,  
22 Respondents shall immediately take all appropriate action to  
23 prevent, abate, or minimize the threat, and shall immediately  
24 notify the EPA Remedial Project Manager. If this person is not  
25 available, Respondents shall notify the EPA Emergency Response  
26 Unit, Region 9. Respondents shall take such action in  
27 consultation with EPA's RPM, and in accordance with all  
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1 applicable provisions of this Order, including but not limited to  
2 the Health and Safety Plan and the Contingency Plan. In the  
3 event that Respondents fail to take appropriate response action  
4 as required by this Section, and EPA takes that action instead,  
5 Respondents shall be liable to EPA for all costs of the response  
6 action pursuant to Section 107 of CERCLA.

7 B. Nothing in the preceding paragraph shall be deemed to  
8 limit any authority of the United States to take, direct, or  
9 order all appropriate action to protect human health and the  
10 environment or to prevent, abate, or minimize an actual or  
11 threatened release of hazardous substances on, at, or from the  
12 Site.

### 13 XIII. COMPLIANCE WITH APPLICABLE LAWS

14 A. All activities conducted by Respondents pursuant to this  
15 Order shall be performed in accordance with the requirements of  
16 all Federal and state laws and regulations. EPA has determined  
17 that the activities contemplated by this Order are consistent  
18 with the National Contingency Plan (NCP) if performed in full  
19 compliance with the ROD, this Order, and the plans and schedules  
20 approved here under.

21 B. Except as provided in Section 121(e) of CERCLA and the  
22 NCP, no permit shall be required for any portion of the Work  
23 conducted entirely on-Site; however, Respondents shall meet all  
24 substantive requirements of ARARs as set forth in the ROD. Where  
25 any portion of the Work requires a Federal or state permit or  
26 approval, Respondents shall submit timely applications and take  
27 all other actions necessary to obtain and to comply with all such  
28

1 permits or approvals.

2 C. This Order is not, and shall not be construed to be, a  
3 permit issued pursuant to any Federal or state statute or  
4 regulation.

5 XIV. REMEDIAL PROJECT MANAGER

6 A. All communications, whether written or oral, from  
7 Respondents to EPA shall be directed to EPA's Remedial Project  
8 Manager. Respondents shall submit to EPA four copies of all  
9 deliverables, documents, including plans, reports, and other  
10 correspondence, which are developed pursuant to this Order, and  
11 shall send these documents by overnight mail.

12 EPA's Remedial Project Manager (RPM) is:

13 Janet Rosati  
14 EPA H-6-1  
15 75 Hawthorne  
San Francisco, CA 94105

16 B. EPA has the unreviewable right to change its Remedial  
17 Project Manager. If EPA changes its Remedial Project Manager,  
18 EPA will inform Respondents in writing of the name, address, and  
19 telephone number of the new Remedial Project Manager.

20 C. EPA's RPM shall have the authority lawfully vested in  
21 Remedial Project Managers and On-Scene Coordinators (OSC) by the  
22 National Contingency Plan, 40 C.F.R. Part 300. EPA's RPM shall  
23 have authority, consistent with the National Contingency Plan, to  
24 halt any work required by this Order, and to take any necessary  
25 response action.

26 XV. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

27 A. To the extent that the Site or other areas where work is  
28 to be performed is presently owned or controlled by parties other

1 than those bound by this Order and to the extent that access to  
2 or easements over property is required for the proper and com-  
3 plete performance of this Order, Respondents shall obtain access  
4 agreements from the present owners or those persons who have  
5 control over the property, including lessees, within sixty (60)  
6 days of the effective date of this Order. Site access agreements  
7 shall provide access to EPA, its contractors and representatives,  
8 and to Respondents and their Contractor(s) and authorized  
9 representatives, and such agreements shall specify that  
10 Respondents are not EPA's representatives with respect to  
11 liability associated with Site activities.

12 B. Respondents shall save and hold harmless the United  
13 States and its officials, agents, employees, contractors,  
14 subcontractors, or representatives for or from any and all claims  
15 or causes of action or other costs incurred by the United States  
16 including but not limited to attorneys fees and other expenses of  
17 litigation and settlement arising from or on account of acts or  
18 omissions of Respondents, their officers, directors, employees,  
19 agents, contractors, subcontractors, and any persons acting on  
20 their behalf or under their control, in carrying out activities  
21 pursuant to this Order.

22 C. In the event that site access agreements are not ob-  
23 tained within the sixty (60) day period, Respondents shall notify  
24 EPA within sixty five (65) days of the effective date of this  
25 Order regarding both the lack of, and efforts to obtain, such  
26 agreements. If Respondents fail to gain access within 60 days,  
27 they shall continue to use best efforts to obtain access until  
28



1 access is granted. For purposes of this paragraph, "best ef-  
2 forts" includes but is not limited to, seeking judicial assis-  
3 tance and the payment of money as consideration for access.

4 D. Respondents or any of their agents or representatives  
5 shall allow EPA and its authorized representatives and  
6 contractors to enter and freely move about all property at the  
7 Site and off-Site areas subject to or affected by the work under  
8 this Order or where documents required to be prepared or  
9 maintained by this Order are located, for the purposes of  
10 inspecting conditions, activities, the results of activities,  
11 records, operating logs, and contracts related to the Site or  
12 Respondents and its representatives or contractors pursuant to  
13 this Order; reviewing the progress of the Respondents in carrying  
14 out the terms of this Order; conducting tests as EPA or its  
15 authorized representatives or contractors deem necessary; using a  
16 camera, sound recording device or other documentary type  
17 equipment; and verifying the data submitted to EPA by  
18 Respondents. Respondents shall allow EPA and its authorized  
19 representatives to enter the Site, to inspect and copy all  
20 records, files, photographs, documents, sampling and monitoring  
21 data, and other writings related to work undertaken in carrying  
22 out this Order. Nothing herein shall be interpreted as limiting  
23 or affecting EPA's right of entry or inspection authority under  
24 Federal law.

25 E. Respondents may assert a claim of business  
26 confidentiality covering part or all of the information submitted  
27 to EPA pursuant to the terms of this Order under 40 C.F.R.  
28

1 § 2.203, provided such claim is not inconsistent with Section  
2 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions  
3 of law. This claim shall be asserted in the manner described by  
4 40 C.F.R. § 2.203(b) and substantiated by Respondents at the time  
5 the claim is made. Information determined to be confidential by  
6 EPA will be given the protection specified in 40 C.F.R. Part 2.  
7 If no such claim accompanies the information when it is submitted  
8 to EPA, it may be made available to the public by EPA or the  
9 state without further notice to the Respondents. Respondents  
10 shall not assert confidentiality claims with respect to any data  
11 related to Site conditions, sampling, monitoring or any other  
12 information addressed by Section 104(e)(7)(F).

13 F. Respondents shall maintain for the period during which  
14 this Order is in effect, an index of documents that Respondents  
15 claim contain confidential business information. The index shall  
16 contain, for each document, the date, author, addressee, and  
17 subject of the document. Upon written request from EPA,  
18 Respondents shall submit a copy of the index to EPA.

19 G. Any person obtaining access to the Site pursuant to this  
20 provision shall comply with all applicable provisions of the  
21 Worker Health and Safety Plan as submitted pursuant to the SOW.

22 H. Notwithstanding any provision of this Order, the United  
23 States retains all of its access authorities and rights under  
24 CERCLA, RCRA and any other applicable federal statute or  
25 authority.

26 I. Each Respondent shall provide to EPA upon request, copies  
27 of all documents and information within its possession and/or  
28

1 control or that of its contractors or agents relating to  
2 activities at the Site or to the implementation of this Order,  
3 including but not limited to trucking logs, receipts, reports,  
4 correspondence, or other documents or information related to the  
5 Work. Each Respondent shall also make available to EPA for  
6 purposes of investigation, information gathering, or testimony,  
7 its employees, agents, or representatives with knowledge of  
8 relevant facts concerning the performance of the Work.

9                   XVI. RECORD PRESERVATION

10           A. Until ten (10) years after EPA provides notice to  
11 Respondents that the Work has been completed, each Respondent  
12 shall preserve and retain all records and documents in its  
13 possession or control, including the documents in the possession  
14 or control of their contractors and agents on and after the  
15 effective date of this Order that relate in any manner to the  
16 Site. At the conclusion of this document retention period, each  
17 Respondent shall notify the United States at least ninety (90)  
18 calendar days prior to the destruction of any such records or  
19 documents, and upon request by the United States, Respondent  
20 shall deliver any such records or documents to EPA.

21           B. Within 10 days after the effective date of this Order,  
22 each Respondent shall submit a written certification to EPA's RPM  
23 that they have not altered, mutilated, discarded, destroyed or  
24 otherwise disposed of any records, documents or other information  
25 relating to their potential liability with regard to the Site  
26 since notification of potential liability by the United States or  
27 the State or the filing of suit against it regarding the Site.

1 Respondents shall not dispose of any such documents without prior  
2 approval by EPA. Each Respondent shall, upon EPA's request and  
3 at no cost to EPA, deliver the documents or copies of the  
4 documents to EPA.

5                   XVII. DELAY IN PERFORMANCE

6           A. Any delay in performance of this Order that, in EPA's  
7 judgment, is not properly justified by Respondents under the  
8 terms of this Section shall be considered a violation of this Or-  
9 der. Any delay in performance of this Order shall not affect  
10 Respondents' obligations to fully perform all obligations under  
11 the terms and conditions of this Order.

12          B. Respondents shall notify EPA of any delay or anticipated  
13 delay in performing any requirement of this Order. Such  
14 notification shall be made by telephone to EPA's RPM within forty  
15 eight (48) hours after any Respondent first knew or should have  
16 known that a delay might occur. Respondents shall adopt all  
17 reasonable measures to avoid or minimize any such delay. Within  
18 five (5) business days after notifying EPA by telephone,  
19 Respondents shall provide written notification fully describing  
20 the nature of the delay, any justification for delay, any reason  
21 why Respondents should not be held strictly accountable for  
22 failing to comply with any relevant requirements of this Order,  
23 the measures planned and taken to minimize the delay, and a  
24 schedule for implementing the measures that will be taken to  
25 mitigate the effect of the delay. Increased costs or expenses  
26 associated with implementation of the activities called for in  
27 this Order is not a justification for any delay in performance.

1 XVIII. ASSURANCE OF ABILITY TO COMPLETE WORK

2 A. Respondents shall demonstrate their ability to complete  
3 the Work required by this Order and to pay all claims that arise  
4 from the performance of the Work by obtaining and presenting to  
5 EPA within thirty (30) days after approval of the RD Work Plan,  
6 one of the following: (1) a performance bond; (2) a letter of  
7 credit; (3) a guarantee by a third party; or (4) internal  
8 financial information to allow EPA to determine that Respondent  
9 has sufficient assets available to perform the Work. Respondents  
10 shall demonstrate financial assurance in an amount no less than  
11 \$14,500,000, the estimate of cost for the Remedial Design and  
12 Remedial Action. If Respondents seeks to demonstrate ability to  
13 complete the Remedial Action by means of internal financial  
14 information, or by guarantee of a third party, they shall  
15 re-submit such information annually, on the anniversary of the  
16 effective date of this Order. If EPA determines that such  
17 financial information is inadequate, Respondents shall, within  
18 thirty (30) days after receipt of EPA's notice of determination,  
19 obtain and present to EPA for approval one of the other three  
20 forms of financial assurance listed above.

21 B. At least seven (7) days prior to commencing any work at  
22 the Site pursuant to this Order, Respondents shall submit to EPA  
23 a certification that Respondents or their contractors and  
24 subcontractors have adequate insurance coverage or have  
25 indemnification for liabilities for injuries or damages to  
26 persons or property which may result from the activities to be  
27 conducted by or on behalf of Respondents pursuant to this Order.  
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1 Respondents shall ensure that such insurance or indemnification  
2 is maintained for the duration of performance of the Work  
3 required by this Order.

4 XIX. UNITED STATES NOT LIABLE

5 The United States, by issuance of this Order, assumes no  
6 liability for any injuries or damages to persons or property  
7 resulting from acts or omissions by any or all Respondents, or  
8 their directors, officers, employees, agents, representatives,  
9 successors, assigns, contractors, or consultants in carrying out  
10 any action or activity pursuant to this Order. Neither EPA nor  
11 the United States may be deemed to be a party to any contract  
12 entered into by any or all Respondents or their directors,  
13 officers, employees, agents, successors, assigns, contractors, or  
14 consultants in carrying out any action or activity pursuant to  
15 this Order.

16 XX. ENFORCEMENT AND RESERVATIONS

17 A. EPA reserves the right to bring an action against Respon-  
18 dents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery  
19 of any response costs incurred by the United States related to  
20 this Order. This reservation shall include but not be limited to  
21 past costs, direct costs, indirect costs, the costs of oversight,  
22 the costs of compiling the cost documentation to support  
23 oversight cost demand, as well as accrued interest as provided in  
24 Section 107(a) of CERCLA.

25 B. Notwithstanding any other provision of this Order, at any  
26 time during the response action, EPA may perform its own studies,  
27 complete the response action (or any portion of the response  
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1 action) as provided in CERCLA and the NCP, and seek reimbursement  
2 from Respondents for its costs, or seek any other appropriate  
3 relief.

4 C. Nothing in this Order shall preclude EPA from taking any  
5 additional enforcement actions, including modification of this  
6 Order or issuance of additional Orders, and/or additional  
7 remedial or removal actions as EPA may deem necessary, or from  
8 requiring Respondents in the future to perform additional ac-  
9 tivities pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any  
10 other applicable law. Respondents shall be liable under CERCLA  
11 Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such  
12 additional actions.

13 D. Notwithstanding any provision of this Order, the United  
14 States hereby retains all of its information gathering, inspec-  
15 tion and enforcement authorities and rights under CERCLA, RCRA  
16 and any other applicable statutes or regulations.

17 E. Each Respondent shall be subject to civil penalties under  
18 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than  
19 \$25,000 for each day in which it willfully violates, or fails or  
20 refuses to comply with this Order without sufficient cause. In  
21 addition, failure to properly provide response action under this  
22 Order, or any portion hereof, without sufficient cause, may  
23 result in liability under Section 107(c)(3) of CERCLA, 42  
24 U.S.C. § 9607(c)(3), for punitive damages in an amount at least  
25 equal to, and not more than three times the amount of any costs  
26 incurred by the Fund as a result of such failure to take proper  
27 action.

1 F. Nothing in this Order shall constitute or be construed as  
2 a release from any claim, cause of action or demand in law or  
3 equity against any person for any liability it may have arising  
4 out of or relating in any way to the Site.

5 G. If a court issues an order that invalidates any provision  
6 of this Order or finds that any Respondent has sufficient cause  
7 not to comply with one or more provisions of this Order,  
8 Respondents shall remain bound to comply with all provisions of  
9 this Order not invalidated by the court's order. Each Respondent  
10 is jointly and severally liable with all requirements of the  
11 Order.

12 XXI. ADMINISTRATIVE RECORD

13 Upon request by EPA, Respondents must submit to EPA all  
14 documents related to the selection of the response action for  
15 possible inclusion in the administrative record file.

16 XXII. EFFECTIVE DATE AND COMPUTATION OF TIME

17 This Order shall be effective fifteen (15) days after the  
18 Order is signed by the Director, Hazardous Waste Management  
19 Division. All times for performance of ordered activities shall  
20 be calculated from this effective date.

21 XXIII. OPPORTUNITY TO CONFER

22 A. Respondents may, within five (5) days after the date this  
23 Order is signed, request a conference with EPA's Director of the  
24 Hazardous Waste Management Division, or whomever the Director may  
25 designate except for the RPM, to discuss this Order. If  
26 requested, the conference shall occur within 14 days of the  
27 request. The conference shall take place at 75 Hawthorne Street,  
28



1 San Francisco, California.

2 B. The purpose and scope of the conference shall be limited  
3 to issues involving the implementation of the response actions  
4 required by this Order and the extent to which Respondents intend  
5 to comply with this Order. This conference is not an evidentiary  
6 hearing, and does not constitute a proceeding to challenge this  
7 Order. It does not give Respondents a right to seek review of  
8 this Order, or to seek resolution of potential liability, and no  
9 official stenographic record of the conference will be made. At  
10 any conference held pursuant to Respondents' request, Respondents  
11 may appear in person or by an attorney or other representative.

12 Requests for a conference must be by telephone followed by  
13 written confirmation mailed that day to Janet Rosati, RPM, (415)  
14 744-2247, 75 Hawthorne Street, San Francisco, CA 94105.

15  
16 So Ordered, this 30<sup>th</sup> day of Sept., 1991.

17  
18  
19  
20 BY: 

21 Director, Hazardous Waste Management Division  
22 U.S. Environmental Protection Agency  
23  
24  
25  
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